THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.19882 OF 1998

Dated:02.08.2006

Between:

S.Veeraiah (died) S/o Laxminarasiah and others

... PETITIONERS

And:

The Chief Engineer, Electricity,
Warangal Zone, Warangal and another.

...**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.19882 OF 1998

ORDER:

The first petitioner, S.Veeraiah, filed this writ petition for issuing a writ of certiorari calling for the records pertaining to the Memo No.SE:OP:WGL:SPS:D.No.539/97 dated 25.09.1997 issued by the second respondent and the consequential proceedings in Memo No.CEW/AS/P1/ F.No.438/85-23, dated 14.05.1998 issued by the first respondent, and quash the same as illegal and arbitrary.

The first petitioner died during the pendency of the writ petition and his legal representatives i.e, the wife and children are brought on record as per the order of this Court dated 10.02.2000 in W.P.M.P.No.33820 of 1999. It is brought to the notice of this Court by the learned counsel for the petitioners that the second petitioner i.e., the wife of the deceased Veeraiah is also no more and only the children of the deceased Veeraiah, who are petitioners 3 to 5 are on record.

The brief facts of the case are, the first petitioner S.Veeraiah was working as Foreman Grade II in the respondent Corporation, Andhra Pradesh State Electricity Board. Through a show cause notice dated 14.07.1983, the said Veeraiah was called upon to explain as to why an amount of Rs.2,36,060-70 ps, being the cost of the shortage of material, shall not be recovered from him. For the said notice, the said Veeraiah submitted an explanation. After some correspondence, a Memo was issued on 25.01.1985 stating that the above said amount would be recovered from the petitioner. Questioning the said memo, Veeraiah filed a writ petition, being W.P.No.8864 of 1987, and a learned Single Judge of this Court, by an order dated 25.01.1995, allowed the said writ petition by setting aside order, dated 25.01.1985. However, the learned Single Judge observed that the respondent authorities are not precluded from holding further enquiry to establish that the shortage is on account of the negligence of the petitioner or that the petitioner is responsible for the shortage. Against the said order of the learned Single Judge, the second respondent filed an appeal, being Writ Appeal No.653 of 1996, and a Division Bench of this Court, by an order dated 23.07.1996, modified the judgment of the learned Single Judge, observing as follows:

> "It will be fair if the writ petitioner-respondent is given an opportunity to explain discrepancies and bring to the notice of the competent authority that the loss or the shortage has not been caused for the reason of any lapse on his part and that notwithstanding that he has been in the custody of the property, there is a possibility of some other cause intervening and some other person being responsible for the loss or shortage. This can be achieved in our view, without interfering with the order passed by the competent authority and resorting to the procedure of extending an *ex facto* opportunity to the writ petitioner-respondent. The appellant shall receive any further explanation or cause shown by the writ petitioner-respondent and if so advised, make such enquiries as are necessary on such explanation or cause shown by the writ petitioner-respondent and pass suitable orders. In case there is any

> reason to recall the order, the appellant shall do so. If, however, there is no reason to do so, the appellant shall accordingly make a speaking order and communicate the same to the writ petitioner-respondent."

Pursuant to the direction given in the writ appeal, the Corporation issued Memo No.1349 of 1996, dated 13.11.1996, calling for an explanation from the said Veeraiah for which the said Veeraiah gave a reply, dated 02.12.1996. Considering the said reply, and in the light of the observations made by this Court in Writ Appeal No.653 of 1996, the second respondent issued a final order for recovery of the said amount of
Rs.2,36,060-72 from the petitioner. Against the said order, as appeal is provided for, the first petitioner preferred an appeal before the first respondent. However, the first respondent also confirming the order of the second respondent, dismissed the appeal. Against the said orders, this writ petition is filed.

A detailed counter is filed on behalf of the respondents.

The main contention of the learned counsel for the petitioner is that the respondent authorities, without any application of mind, simply passed the impugned proceedings in a routine and mechanical manner. It is also his further contention that the first petitioner was kept under suspension on 13.06.1980, and the said order of suspension was actually received by him only on 01.07.1980, that the inventory took place on 02.07.1980 and that there is possibility of missing of the material in the interregnum period ie., between 13.06.1980 and 01.07.1980, and therefore, it cannot be said that the first petitioner alone is responsible for the loss of the said material.

From a perusal of the material on record, this Court is of the view that the first contention of the learned counsel for the petitioner that the impugned order is passed in a routine and mechanical manner, cannot be accepted for the simple reason that the competent authority passed

the impugned order after giving sufficient opportunity to the petitioner to explain as to why he cannot be fastened with the liability. In fact, the second respondent, who is the competent authority, had supplied the list of shortage of materials to the said first petitioner and it is also clear from the order that the first petitioner was permitted to verify the records and to give reply. Despite giving the said opportunity to verify the records and give reply, he has not availed the said opportunity. A perusal of the counter filed by the respondents shows that the material was always kept outside the room, as those material cannot be kept in a room, but the premises has fence, and security guard would be watching for 24 hours, and so long as the material is in the custody of the first petitioner, he is the custodian of the said property and is answerable for any loss or theft. In view of the same the said contention cannot be accepted.

So far as the second contention is concerned, in fact, the petitioner himself absconded from duty from 13.06.1980 to 30.06.1980 and hence, the order of suspension could not be served on him till 01.07.1980. No doubt, the inventory of stocks took place on 02.07.1980, but as already observed, the first petitioner was absent from 13.06.1980 to 30.06.1980 without handing over the stores material, so the inventory was taken only on 02.07.1980. Without handing over the stocks, now, the petitioner cannot turn round and say that something might have happened in the interregnum period, and the said contention, in my considered view, has no basis or is tenable.

In the light of the above discussion, this Court is of the considered view that the writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, the fact remains that the delinquent officer i.e, Veeraiah, and his wife are no more and died during the pendency of this writ petition. In the light of the same, the Corporation may act sympathetically taking the said

facts into consideration. No costs.

02.08.2006

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